

EDNA L. PATTERSON

IBLA 82-730

Decided June 10, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 57437, U MC 57438, U MC 57441, and U MC 57442.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold or evidence of annual assessment work on the claim prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it became lost in the mail, the loss must be borne by the claimant.

APPEARANCES: Edna L. Patterson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Edna L. Patterson appeals the February 22, 1982, decisions of the Utah State Office, Bureau of Land Management (BLM), which declared the unpatented Divide #1, Divide #2, Joe Stalin #1, and Joe Stalin #2 lode mining claims, U MC 57437, U MC 57438, U MC 57441, and U MC 57442 abandoned and void because evidence of assessment work or notice of intent to hold the claims was not filed with BLM on or before December 30, 1981, as required by 43 CFR 3833.2-1, implementing section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The evidence of assessment work was received by BLM January 4, 1982.

Appellant alleges the copies of the proof of labor for her claims were mailed to BLM during the week of December 27, 1981, in sufficient time to have been delivered by December 30. ^{1/}

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.2-1 and 3833.4, require that evidence of assessment work for each assessment year be filed in the proper BLM office within the specified time limits, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed for recordation with BLM.

Despite appellant's statement that the documents were timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). Thus, even if the documents had been mailed and an error by the Postal Service prevented them from reaching the BLM office timely, that fact would not excuse appellant's failure to comply with the cited regulations. Magdalene Pickering Franklin, 57 IBLA 244 (1981); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held a mining claimant, having chosen the Postal Service as her means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of her filings. Magdalene Pickering Franklin, *supra*; Everett Yount, *supra*; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

This Board has no authority to excuse lack of compliance with the statutes or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

^{1/} The case files are devoid of any envelopes so it is impossible to ascertain when the envelope was postmarked.

